

CANNATA O'TOOLE FICKES & OLSON LLP
100 Pine Street, Suite 350
San Francisco, CA 94111

KARL OLSON (SBN 104760)
AARON R. FIELD (SBN 310648)
IRENE LEE (SBN 331485)
CANNATA O'TOOLE FICKES & OLSON LLP
100 Pine Street, Suite 350
San Francisco, California 94111
Telephone: (415) 409-8900
Facsimile: (415) 409-8904
Email: kolson@cofolaw.com
afield@cofolaw.com
ilee@cofolaw.com

Attorneys for Plaintiff
AMERICAN SMALL BUSINESS LEAGUE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

AMERICAN SMALL BUSINESS
LEAGUE,

Plaintiff,

v.

UNITED STATES OFFICE OF
MANAGEMENT AND BUDGET,

Defendant.

CASE NO. 4:20-cv-07126-DMR

**DECLARATION OF IRENE LEE IN
SUPPORT OF PLAINTIFF AMERICAN
SMALL BUSINESS LEAGUE'S
OPPOSITION TO DEFENDANT UNITED
STATES OFFICE OF MANAGEMENT
AND BUDGET'S MOTION FOR
SUMMARY JUDGMENT AND CROSS-
MOTION FOR SUMMARY JUDGMENT**

Date: April 28, 2022

Time: 1:00 p.m.

Place: Zoom

Judge: The Honorable Donna M. Ryu

CANNATA O'TOOLE FICKES & OLSON LLP
 100 Pine Street, Suite 350
 San Francisco, CA 94111

I, IRENE LEE, declare as follows:

1. I am a member in good standing of the State Bar of California. My law firm, Cannata, O'Toole, Fickes & Olson, LLP, is counsel of record for Plaintiff American Small Business League ("Plaintiff" or "ASBL") in this case. I make this declaration of personal knowledge and if called as a witness I could and would testify competently to the facts stated herein, except as to matters stated on information and belief, and as to them I believe them to be true.

2. On April 7, 2020, ASBL submitted Freedom of Information Act ("FOIA") Request No. 2020-319 to Defendant United States Office of Management and Budget ("Defendant" or "OMB"). Attached as **Exhibit A** is a true and correct copy of this FOIA request.

3. On June 9, 2020, OMB issued its initial determination of ASBL's FOIA request, stating that it has no responsive records, but recommended that ASBL review The President's Budget, published by the OMB. Attached as **Exhibit B** is a true and correct copy of the OMB's initial determination.

4. On June 11, 2020, ASBL sent an email correspondence to OMB stating that it could not locate responsive records using the source provided. Attached as **Exhibit C** is a true and correct copy of ASBL's email correspondence dated June 11, 2020.

5. On June 12, 2020, OMB responded to ASBL's email correspondence dated June 11, 2020 and recommended additional sources that ASBL should review. Attached as **Exhibit D** is a true and correct copy of OMB's email correspondence dated June 12, 2020.

6. On June 19, 2020, ASBL sent an email correspondence to OMB stating that it could not locate responsive records using the additional sources provided. Attached as **Exhibit E** is a true and correct copy of ASBL's email correspondence dated June 19, 2020. ASBL did not receive a response to this correspondence.

7. On July 17, 2020, ASBL filed a formal administrative appeal of FOIA Request No. 2020-319. Attached as **Exhibit F** is a true and correct copy of ASBL's administrative appeal.

CANNATA O'TOOLE FICKES & OLSON LLP
 100 Pine Street, Suite 350
 San Francisco, CA 94111

8. OMB confirmed receipt of this administrative appeal on July 17, 2020. Attached as **Exhibit G** is a true and correct copy of OMB's confirmation of receipt of ASBL's administrative appeal. ASBL did not receive a response from the OMB to this administrative appeal.

9. On October 13, 2020, ASBL filed its complaint in this action. Defendants OMB and the SBA filed a motion to sever the claims against the two defendants, which was granted on April 21, 2021.

10. On March 12, 2021, OMB's counsel sent an email correspondence to ASBL's counsel reiterating OMB's position that it does not have responsive records and providing additional sources for ASBL to review. Attached as **Exhibit H** is a true and correct copy of OMB's email correspondence dated March 12, 2021.

11. On March 15, 2021, ASBL sent a letter to OMB in response to OMB's email correspondence dated March 12, 2021. Attached as **Exhibit I** is a true and correct copy of ASBL's letter dated March 15, 2021.

12. On October 5, 2021, at the parties' request, a settlement conference was held, but a settlement was not reached.

13. On October 7, 2021, ASBL sent a follow-up correspondence to OMB shedding light on why it believes that the agency has responsive records. Attached as **Exhibit J** is a true and correct copy of ASBL's email correspondence dated October 7, 2021.

14. On November 9, 2021, OMB responded to ASBL's inquiries. Attached as **Exhibit K** is a true and correct copy of OMB's email correspondence dated November 9, 2021.


15. On December 2, 2021, ASBL responded to OMB's November 9, 2021 email correspondence. Attached as **Exhibit L** is a true and correct copy of ASBL's email correspondence dated December 2, 2021. ASBL has not received a response to this correspondence as of the date of this filing.

16. Attached as **Exhibit M** is a true and correct copy of the *Joint Statement of Janet L. Yellen, Secretary of the Treasury, and Shalanda D. Young, Acting Director of the Office of*

1 *Management and Budget, on Budget Results for Fiscal Year 2021*, published on October 22, 2021
2 by the White House.

3 I declare under penalty of perjury under the laws of the United States of America that the
4 foregoing is true and correct.

5 Executed this 10th day of February 2022 in San Francisco, California.

6 
7

8 IRENE LEE
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CANNATA O'TOOLE FICKES & OLSON LLP
100 Pine Street, Suite 350
San Francisco, CA 94111